Appln No. 09/775,315
Amdt date March 30, 2005
Reply to Office action of October 15, 2004

REMARKS/ARGUMENTS

In the final Office action dated October 15, 2004, the examiner rejects claims 1-4 under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 5,429,890 to Pynenburg, et al. in view of U.S. Patent No. 5,370,948 to Hasegawa, et al. In addition, the examiner rejects claim 10 under 35 U.S.C. § 103(a) as allegedly obvious over U.S. Patent No. 5,783,333 to Mayer. In their previous response to this final action, applicants amended claim 10 and presented evidence of unexpected results to overcome the obviousness rejection of claims 1-4. In the Advisory action dated February 25, 2005, the examiner refused to enter applicants' amendments, asserting that they raise new issues. In this supplemental amendment after final action, applicants cancel claim 10 and reassert their arguments that claims 1-4 are in condition for allowance. Because applicants' previous response to the outstanding final action included no amendments to claims 1-4, applicants respectfully request consideration of their remarks regarding those claims, as outlined below.

In rejecting claims 1-4, the examiner notes that absent unexpected results, the excess of lithium manganese oxides recited in independent claim 1, is an "optimizable parameter[] for [a] result-effective variable[]." (Office action, page 3). However, applicants note that the excess of lithium manganese oxides recited in claim 1, does provide unexpected results, as described in the specification. For example, the specification beginning at page 5, line 22, describes the different properties of nickel manganese based oxides and manganese based oxides. In fact, the two oxides are described as having the opposite properties. Specifically, the nickel-manganese-based oxides exhibit high capacity but inferior charge and discharge characteristics and thermal stability, while the manganese based oxides exhibit good charge and discharge capacity and thermal stability, but low capacity. The synergistic effect of the combination of oxides is also described.

Moreover, the specification beginning at page 6, line 5, and at page 12, line 11, describes the ratio of components as being important in maximizing the synergistic effect of the combination of nickel-manganese-based oxides and manganese-based oxides. Because the

excess of lithium manganese oxides, as recited in claim 1, provide unexpected results, as described above, independent claim 1, and all claims dependent therefrom, including claims 2-4, are allowable over Pynenburg in view of Hasegawa.

Claims 1-4 remain pending in this application. Applicants have canceled claim 10. Applicants submit that all of pending claims 1-4 are in condition for allowance. Applicants therefore request a timely indication of allowance. However, if there are any remaining issues, the examiner is asked to contact applicants' counsel at the number below.

Respectfully submitted,
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